

EXHIBIT 26

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
ORACLE AMERICA, INC.
Plaintiff,
vs. Case No. 3:10-cv-03561-WHA
GOOGLE, INC.,
Defendants.

VIDEO DEPOSITION OF ITAMAR SIMONSON, Ph.D.
San Francisco, California
Tuesday, March 8, 2016
Volume I

REPORTED BY:
REBECCA L. ROMANO, RPR, CSR No. 12546
JOB NO. 2241705
PAGES 1 - 202

1 Q. Do you recall why you submitted it to the
2 Journal of Marketing Science?

3 A. I don't.

4 Q. So the -- the next one down, The
5 "Preference Influencing in Choice," do you remember
6 how long it took to get that article accepted into
7 the Journal of Marketing Research?

8 A. I don't.

9 Q. Do you recall why you submitted that
10 article to the Journal of Marketing Research?

11 A. No. I mean, I -- without the -- the
12 topic was suitable for
13 Journal of Marketing Research.

14 Q. But you don't recall today the reasons
15 why you selected that journal over other journals?

16 A. I wouldn't go that far. I mean, the
17 choice is between Journal of Marketing Research and
18 Journal of Consumer Research. These are the two
19 premier journals relating to consumer
20 decision-making.

21 I mean, they cover many other topics,
22 but -- so it was our choice between these two and
23 for -- for a reason that I do not recall right now,
24 I do not remember why we made that choice. It --
25 it could have gone either way.

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1 you consider these articles to be important to your
2 career as an academic?

3 MR. PURCELL: Object to the form.

4 THE DEPONENT: You know, like other
5 articles, they're -- yeah, they're important.

6 Q. (By Ms. Feeman) And do you recall how long
7 it took for the article "Racial Preferences in Dating"
8 to get accepted by the Review of Economic Studies?

9 A. I do not recall.

10 Q. Do you recall why you selected the
11 Review of Economic Studies as the publication for
12 the article?

13 A. Because we thought that that project was
14 suitable for an economic journal, as opposed to,
15 say, a marketing journal or a psychology journal.
16 And I can explain to you the reasons. And this was
17 a good journal and we decided to select that one.

18 Q. Do you recall why you chose it over the
19 Quarterly Journal of Economics?

20 A. Well, we already published one in the
21 Quarterly -- Quarterly Journal of Economics so we
22 decided to send this part of the project to this
23 other journal.

24 And I should say, I wouldn't regard
25 myself as an economist, even though I do have a BA

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1 Q. So I notice that the -- the last one on
2 the list here from 2007 was called "Racial

3 Preferences in Dating."

4 Do you recall why you decided to do a --
5 an article on racial preferences in dating?

6 A. It was part of a project that had to do
7 with mate selection, where we used studies
8 involving speed dating. And there was another
9 article that I think we published earlier or
10 maybe -- yes, in 2006, which we sent to another
11 economic journal.

12 And the reason we sent it to that -- I
13 don't know if you care why we sent it -- the one in
14 2006 to this quarterly Journal of Economics, but I
15 can explain. But I can explain -- I forget,
16 what -- what did you ask about the racial
17 preferences in -- in dating?

18 Q. So my question had been, do you recall
19 why you choose to do an article on that topic?

20 A. We thought it was interesting.

21 Q. Okay.

22 A. We -- I'm interested in choices that
23 people make, and selecting a mate is one of the
24 most important choices we make in our lives.

25 Q. And these articles listed on your CV, do

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1 degree in economics. But I wouldn't say I'm an
2 economist. So I consulted my coauthors on the
3 selection of the journals for these two articles
4 related to mate selection.

5 MS. FEEMAN: I'd now like to mark as
6 Exhibit 5135 what was attached as Exhibit B to your
7 expert report.

8 (Exhibit 5135 was marked for identification by
9 the court reporter and is attached hereto.)

10 Q. (By Ms. Feeman) Dr. Simonson, do you
11 recognize Exhibit 5135?

12 A. It appears to be Exhibit B to my report.

13 Q. And what is Exhibit B?

14 A. It's a list of cases in which I testified
15 as an expert at trial, "(including written expert
16 reports submitted to the court) or by Deposition in
17 the Past Four Years."

18 Q. And so is this a comprehensive list of --
19 of every case in which you've testified either at
20 trial or deposition in four years?

21 A. Yes, with a couple of exceptions. I
22 think where you see the no deposition or trial
23 testimony is listed.

24 So, for example, in the Gucci, that's
25 Case No. 2, the court mentioned my name in her

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1 them exams?

2 A. No.

3 Q. No.

4 A. I mean, it depends. I mean, in the --
5 when I was teaching the core marketing class, which
6 is the introductory marketing class, we did give
7 them an exam.

8 Q. When's the last time you taught that
9 class?

10 A. Ten years ago.

11 Q. And do you ever notice that your
12 students, when they took those exams, recalled
13 materials with a different level of precision?

14 A. No.

15 MR. PURCELL: Object to the form.

16 THE DEPONENT: The exam was a particular
17 case study. So they are given -- they had a total
18 of, say, four hours. They were given a case study.
19 They were reading and analyzing that case study,
20 say, for an hour and a half. And then they
21 answered, say, three, four questions about that
22 case study. And they had the case study in front
23 of them. There was no issue of recall.

24 Q. (By Ms. Feeman) So they didn't need to -- in
25 order to do the case study, to recall what they had

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1 language would cause developers to choose to
2 develop for a platform, correct?

3 A. Yes.

4 Q. So when you first set out to conduct this
5 study, how did you define the universe of
6 developers that you were trying to -- to sample?

7 A. People who -- or firms -- that develop
8 mobile applications.

9 Q. So did you have any more details in
10 your -- your universe other than that?

11 A. No.

12 Q. And did you actually define that universe
13 somewhere in your report?

14 A. I mean, I describe them -- that's -- if
15 you look at the screening criteria, the questions
16 we talked about, that defines the universe.

17 Q. And can you point -- point me to that,
18 please.

19 A. Sure.

20 I mean, that's -- if you -- you can look
21 at the tables. You can look at questions QA2,
22 going all the way to -- to QA5.

23 Q. Okay. So -- so do I take it that -- that
24 there's not a description set forth in the body of
25 your report, it's by looking at the questions that

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1 learned in the class?

2 A. Well, hopefully, they learned the general
3 principles which they could apply. It's not --
4 you know, at that level, it's not something where
5 you've just memorized some things and -- and then
6 you repeat them, or you're tested about them in the
7 exam just to see if you memorized the textbook or
8 whatever.

9 Q. So in -- in your survey in this case, one
10 of the things that you were trying to do was to --
11 to test whether, for example, business concerns,
12 money concerns, caused developers to choose to
13 develop on a platform; is that correct?

14 A. Business concerns?

15 Q. Yes.

16 A. What do you mean by that?

17 Q. Okay. One of the things that you were
18 trying to test in this case was whether the number
19 of users or devices that were being used by a
20 platform would cause developers to choose to
21 develop for that platform; is that correct?

22 A. Yes, using open-ended question. Yes.

23 Q. Okay. And -- and another thing that you
24 were trying to test was whether a given programming
25 language and familiarity with that programming

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1 we understand what the universe is?

2 A. No, there is a description of the
3 screening criteria and that is how you
4 operationalize the universe. That's -- and that --
5 that description is included in my report.

6 Q. Okay. Could you please point me to where
7 it is in your report.

8 A. Sure.

9 If you look at page 9 and you look under
10 the heading "Survey Universe," all the way to "Main
11 Questionnaire."

12 Q. So I see here the -- the screening
13 criteria, which would actually define the sample of
14 152, correct?

15 A. Right. Uh-huh. Yes.

16 Q. But -- but I don't see where the
17 description is of the universe from which those 152
18 were selected, if you could point me to that,
19 please.

20 A. No, but that's not so. The screening
21 criteria are determined first. It's not as if I'm
22 going to some number, say, 150, and say, okay, tell
23 me about yourself. And now I say, okay. Based on
24 what they told me, that's the universe. No, it
25 works the other way.

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1 eliminate those 23 respondents.

2 Q. Why would it have been a mistake?

3 A. Because --

4 MR. PURCELL: Object to the form.

5 THE DEPONENT: -- you -- you -- when you
6 have data from respondents that's relevant, you
7 don't get rid of data. That's one of those rules,
8 number one.

9 Q. (By Ms. Feeman) So even though you reworded
10 question 8 -- I know you say it's insubstantial, but it
11 was significant enough to cause you to issue a new
12 survey -- you still think that -- that it's appropriate
13 to include the 23 respondents?

14 MR. PURCELL: Object to the form.

15 THE DEPONENT: No, I did not issue a
16 whole new survey. I made a couple of minor
17 changes. The overwhelming majority of the survey
18 was the same.

19 Q. (By Ms. Feeman) Have you ever done that
20 before, where you had a survey, made a couple of minor
21 changes, completed the survey and then kept all the
22 respondents together?

23 A. Of course. Many times.

24 Q. Can you give me an example of one?

25 A. Could you --

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1 why did you need to code the surveys?

2 MR. PURCELL: Object to the form.

3 THE DEPONENT: I'm not sure I understand
4 the question.

5 Q. (By Ms. Feeman) I said, if you could look at
6 the 23 and the 152 and tell that the results were not
7 going to change, just by looking at them, then why did
8 you need to go through the coding process?

9 MR. PURCELL: Object to the form.

10 THE DEPONENT: I guess I was not clear.
11 When -- when did I say that I decided it -- it
12 wasn't going to change -- change. I -- I don't
13 know that.

14 Q. (By Ms. Feeman) Okay.

15 A. I said in hindsight, it was not
16 different.

17 Q. But I'm -- when I asked how you knew --
18 because I had asked if the results would have
19 changed if you didn't include the 23, you said no.
20 I said, "How do you know that?" You said, "Because
21 I looked at the results of the 23 and I looked at
22 the total results, and I could tell they didn't
23 change."

24 I said, "Well, did you code them
25 separately and look at them?" You said "No."

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1 Q. Could you give an example of one --

2 A. I -- I can't think of -- but that's --

3 that's the normal. In fact, had I gotten rid of
4 those 23, you'd be sitting here and saying, well,
5 what didn't you like about those 23 that you
6 decided to get rid of them.

7 Q. Do you know if your results would have
8 changed if you had not included those 23
9 respondents?

10 A. They would not have.

11 Q. You undertook that analysis?

12 A. I -- I just looked and there was
13 absolute -- very similar for the first 23 and the
14 subsequent respondents.

15 Q. How did you -- did you code separately to
16 do that review?

17 A. I looked -- I received the 23, looked at
18 them, looked at those responses. I had a couple of
19 days to do that over New Year's Day. I looked at
20 that and I said that's fine. And I mentioned those
21 couple of minor changes and I said they should
22 continue.

23 Q. So if you could tell that the results of
24 the 23 people and the results of the 152 are
25 substantially the same, just by glancing at them,

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1 So I'm asking, how could you tell by just
2 glancing at the 23 and the 152 that the results
3 were not going to change?

4 MR. PURCELL: Object to the form.

5 THE DEPONENT: Still I think we are
6 miscommunicating.

7 The 23 were not coded separately. I just
8 had the -- the full set of responses for each of
9 the 23 respondents. I looked at that and made
10 those couple of minor changes.

11 Looking at the overall results later,
12 when I had all 152, I can tell you now that the 23
13 are similar to the other respondents.

14 Q. (By Ms. Feeman) So I believe you referred to
15 question 8 as a benchmark question; is that correct?

16 A. Which one?

17 Q. Question 8.

18 A. I -- I guess you can call it -- I don't
19 know if I'd call it a benchmark question. I'd say
20 that -- I guess it could be -- I could and I might
21 have referred to it as a benchmark question.

22 But, yeah, essentially, just -- I wanted
23 just to make sure that -- that depending on the
24 specifics of the question, we don't find that
25 everybody is saying, oh, 10, 10, 10, I can do

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